



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 6, 2003

Ms. Kathleen Spears
Officer For Public Information
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2003-3039

Dear Ms. Spears:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180572.

The Dallas County Hospital District (the "district") received a request for the following information:

1. a copy of the entire nursing policies and procedures manual for Parkland Health and Hospital System;
2. a copy of the policy or procedure governing care for major amputation patients;
3. a copy of the policy or procedure governing care for post-operative surgical patients;
4. a copy of the policy or procedure governing the use of bed rails, bed restraints and/or bed alarms;
5. a copy of the policy or procedure governing the use of bed rails for post-surgical patients;

6. a copy of the policy or procedure governing the use of bed rails for amputee patients;
7. a copy of the policy or procedure governing the use of bed rails for elderly patients;
8. a copy of the policy or procedure governing nursing requirements for assessing patient fall risks or precautions to be taken for fall protection; and
9. a copy of the incident report or Quality Assurance report pertaining to the fall in which [the requestor's client] injured her shoulder on or about November 5, 2001.

You state that some responsive information will be released to the requestor. You claim, however, that the submitted document is excepted from disclosure pursuant to section 552.101 of the Government Code, the attorney-client privilege, and the attorney work product privilege. We have considered your claims and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code. Section 552.301 provides in part:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You have not submitted written comments explaining why the exceptions you raise would allow the submitted document to be withheld from public disclosure.

Consequently, we find that the district failed to comply with section 552.301 of the Government Code in requesting a decision from this office.¹

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the provisions of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason to withhold the submitted information pursuant to the attorney-client privilege or the attorney work product privilege. *See Open Records Decision Nos. 676 at 12 (2002), 677 at 10 (2002)* (compelling reason may be demonstrated for attorney-client privileged communications or for information subject to the attorney work product privilege if it is shown that the release of the information would harm a third party). However, as you contend that the requested information is confidential by law, we will address your argument under section 552.101 of the Government Code. *See Open Records Decision No. 630 (1994)* (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the submitted document is made confidential under section 162.032 of the Health and Safety Code and is therefore excepted from disclosure under section 552.101. Section 161.032 provides in pertinent part:

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

¹The submitted documents also include a notice of claim letter sent by the requestor, which includes a request for the medical records of the requestor's client. You state that the district received this notice of claim letter "on or about" January 31, 2002. You have not requested a decision from this office regarding the public availability of the medical records referenced in the notice of claim letter, and you have not submitted any such medical records for our review. Accordingly, we do not address the public availability of the medical records referenced in the notice of claim letter in the present ruling.

You have not demonstrated, however, nor does the submitted document reveal, that the information at issue consists of records, information, or reports of a medical committee, medical peer review committee, or compliance officer. Further, you have not demonstrated that the submitted information consists of records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority. Consequently, we are unable to conclude from the information provided that the document at issue is confidential under section 161.032 of the Health and Safety Code. We therefore determine that the district may not withhold the submitted document under section 552.101 of the Government Code. The district must therefore release the document to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 180572

Enc: Submitted documents

c: Mr. Thomas R. Stauch
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(w/o enclosures)